

Crowd Management and Public Disorder

Understanding Effective Legal and
Operational Standards



DLG
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Attorney Daigle is the principal and founder of Daigle Law Group, LLC, a firm that specializes in law enforcement operations, with an emphasis on management operational consulting services. His experience focuses on civil rights actions, including police misconduct litigation and employment actions. Mr. Daigle acts as legal advisor to police departments across the country, providing legal advice to law enforcement command staff and officers in the areas of legal liability, policy development, employment issues, use of force, laws of arrest and search and seizure. His experience focuses on internal affairs operations and use of force, specifically in the training, investigation, and supervision of force and deadly force incidents. Attorney Daigle speaks at seminars and conferences across the Country focusing on legal standards for effective and constitutional police operation.

He has served as a member of the Independent Monitoring Teams for Oakland CA and formally for Niagara Falls NY. He has worked with Law Enforcement Agencies who are under investigation of a Consent Decree by the Department of Justice Civil Rights Litigation Section. Attorney Daigle developed the DLG Policy Center which provides consulting services on policy development to departments across the Country.

Attorney Daigle is General Counsel for FBI- Law Enforcement Executive Development Association and a member of their instructor cadre teaching Supervisory Liability. He acts a General Counsel for National Internal Affairs Investigators Association (NIAIA) and FBI- National Academy Associated. He was the former Chair of the IACP Legal Officers Section and instructs at the IACP conference. Attorney Daigle is the Chairman of the Legal Section for the National Tactical Officers Association. He has completed the Force Science Institute Certification and Advanced Specialist training programs. He is a former member of the Connecticut State Police and now maintains his certification as a reserve officer.



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**Crowd Control and Management:
Protecting Civil Rights
Legal and Policy**

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Training Objectives
KNOWLEDGE IS POWER



- How to Protect Yourself and Your Agency?
 - This presentation will examine and identify **common police practices**
 - **Inconsistency** – Limit Inconsistent Practices
 - Identify **why** we do certain things
 - Look outside our own operations

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First Amendment

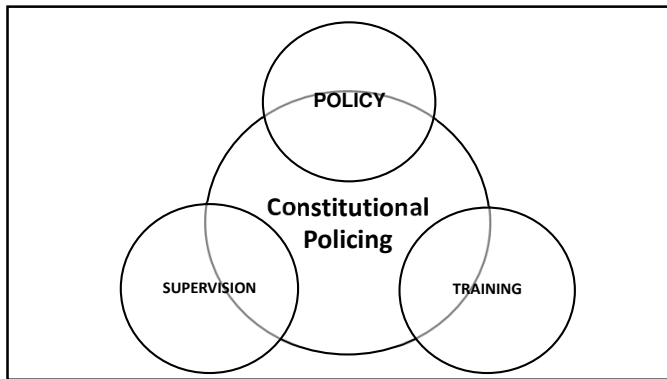
Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the government for a redress of grievances.

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The Why Makes the What Effective...

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What is the First Amendment?

- Thomas Jefferson insisted –
 - List of untouchable areas
 - Essential ingredient in developing the Bill of Rights
 - That's why it's the First one.
- In the beginning the First Amendment only applied to the Federal Government
- After the civil war they were held to apply to the states in early 1930's
- Only provides protection against the government- Police are the government.



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First Amendment Jurisprudence

Nieves v. Bartlett (U.S. May 28, 2019)

Loomis v. City of Rivera Beach (U.S. 2018)

Hartman v. Moore (U.S. Apr. 26, 2006)

Brandenburg v. Ohio (U.S. Jun. 9, 1969)

Tinker v. Des Moines Indep. Sch. Dist (U.S. Feb. 24, 1969)



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Wood v. Eubanks

25 F.4th 414 (6th Cir. 2022)

- Sixth Circuit, February 2022 – First Amendment Rights and “fighting words”.
- The Supreme Court has defined fighting words as words that “by their very utterance inflict injury or tend to incite an immediate breach of the peace.”
- It is a hard thing to prove in court and there are many exceptions to the rule.
- In July 2016, Michael Wood went to the Clark County Fair wearing a shirt that said, “Fuck the Police.”



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Wood v. Eubanks

- A few hours after Wood arrived, the Sheriff's department received a call complaining about his shirt.
- Deputies approached Wood and asked him to identify himself, but Wood declined to do so.
- Wood attempted to record the encounter but stopped when he realized his camera was not working and walked away.
- Several hours later, six deputies and Dean Blair, the Executive Director of the county fairgrounds, approached Wood. Wood was no longer wearing the shirt in question.
- Blair asked Wood, “Where's this shirt? I want to see this shirt.” Blair then asked Wood if he had changed. Wood did not answer but instead asked if he had committed a crime or was being detained. Blair replied that he wanted Wood to leave, that Wood was not welcome, and that Wood needed to get off the fairgrounds. Wood agreed to leave if his admission fee was refunded. After Blair refunded Wood's admission fee, Blair and the officers escorted Wood to an exit.



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Wood v. Eubanks

- While being escorted to an exit, Wood voiced many profane and harsh insults towards Blair and the officers. The officers eventually arrested Wood for disorderly conduct under Ohio Rev. Code § 2917.11(A)(2) and obstructing official business under § 2921.31. The prosecutor later dismissed both charges.
- Wood sued the six officers involved in his arrest under 42 U.S.C. § 1983. Wood alleged that: (1) the officers violated the Fourth Amendment because they arrested him without probable cause; and (2) the officers arrested him in retaliation for the words on his shirt, which were protected speech under the First Amendment.
- The district court held that the officers were entitled to qualified immunity regarding Wood's false arrest claim and dismissed Wood's second claim, ruling that there was insufficient evidence of retaliation by the officers. Wood appealed.



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Wood v. Eubanks

- The Sixth Circuit Court of Appeals found that the Ohio Supreme Court has clearly established that a person may not be punished for disorderly conduct unless the speech in question constitutes "fighting words." However, the fighting words exception is very limited because it is inconsistent with the general principles of free speech guaranteed by the First Amendment.
- The court then noted that this limitation is reflected in Ohio's disorderly conduct statute and the First Amendment, which both require more than the use of profanity, by itself, to establish a criminal offense.
- The court added that police officers are held to a higher standard than average citizens, because the First Amendment requires that they tolerate "coarse criticism."



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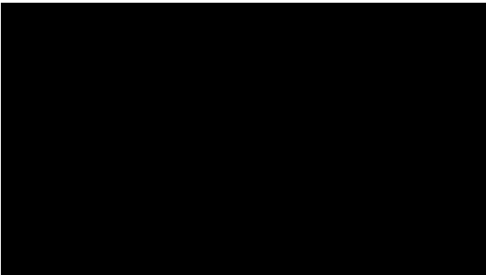
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- Concerning Wood's First Amendment retaliation claim, the court had to consider whether Wood's shirt was "a substantial or motivating factor" in the officers' decision to arrest him. The court held that the district court improperly dismissed this count in Wood's lawsuit. The court based its ruling on the fact that the parties disputed whether Wood's shirt "was a substantial or motivating factor" in the decision to arrest Wood.
- The officers claimed that they removed Wood from the fairgrounds because he was filming people. On the other hand, Wood alleged that Blair walked up behind him flanked by the officers and yelled, "Where's the shirt? I want to see the shirt." In addition, while driving to the jail, Wood claimed that an officer said to Wood, "How's that work? You got a shirt that said, 'f the police,' but you want us to uphold the Constitution?"
- The court held that a reasonable jury, considering these facts, could conclude the officers were motivated to confront Wood and require him to leave the fairgrounds, in part, because of the words on his shirt.



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Occupy Movement

- Law Enforcement is on Notice
- What should Law Enforcement expect to encounter in the future:
 - Political Demonstrations
 - Union Protests
 - Sports Unrest of celebrations (Egypt)
 - Immigration rallies
 - Protests of Government actions.



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Lesson Learned

- What did we learn from the race riots of the civil rights movements and the Vietnam protests.
- Issues with recent encounters:
 - Policy and Response Standards
 - LE Response Attitudes
 - Changes in Equipment / Technology
 - Mass arrest protocols
 - Use of force standards



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Legal Cases

- First Amendment / Crowd Control
 - *Snyder v. Phelps*, 562 U.S. 443 (2011)
 - *Bible Believers v. Wayne County, Mich.*, 805 F. 3d 228 – Court of Appeals, 6th Circuit 2015
 - *Matal v. Tam*, 581 U.S. ____ (2017)
 - *Perez v. Florida*, 137 S.Ct. 853 (2017)



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Snyder v. Phelps

(2011)



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Snyder v. Phelps

(2011)

- Picketing of Soldiers Funerals
- Church group that protested soldier funeral to protest military toleration of homosexuality.
- Father of soldier sued – Won five million dollars–
- SC – whether there could be tort recovery for the emotional distress of the soldiers family – found speech was protected.



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Snyder

The Supreme Court, Chief Justice Roberts, held that:

- In light of content, form, and context, speech of church members who picketed near the funeral of military service member was of public concern and therefore was entitled to special protection under the First Amendment, and
- Father was not a captive audience at the funeral, for purposes of captive audience doctrine.
- All states, cities, towns, and local governments would be well advised to review local statutes and ordinances on funeral and other protests to determine if the ordinances are content neutral which means rules are not directed by the type of speech but rather apply to all speech, good or bad, and are based on some reasonable time, place and manner restriction.



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Snyder

- When notified of a protest or demonstration, law enforcement should apply reasonable time, place, and manner restrictions currently in existence, in an impartial and content neutral manner, in other words, don't consider what is going to be said or expressed, instead look to the existing laws on time, place and manner of speech.
- If there is no immediate public safety issue, immediate enforcement is not likely the best avenue for law enforcement to taken when dealing with 1st Amendment speech – expression issues.



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Permissible Regulations of First Amendment Activities

- **Time, place, and manner restrictions:**
 - Must be content-neutral
 - Must further a significant governmental interest
 - Must be narrowly tailored to advance that interest
 - Must leave open alternative means of communication (Fliers)
- Restrictions cannot be based on a disagreement with the message of the speech based on the subject-matter speech
- Restrictions based on hostile reaction of listeners are also content based



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Time

- Time – Must be reasonable given the location
- Daytime – Greater First Amendment protection
- Nighttime – Reduced First Amendment protection
- Must also consider place and manner



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Place

- Place: Public property – parks, sidewalks, streets (greatest 1st Amend. Protection)
- Public buildings – *Perry Education Assn. v. Perry Local Educators Assn.*, 460 U.S. 37, 46 (1983), “the State, no less than a private owner of property, has power to preserve the property under its control for the use to which it is lawfully dedicated. In addition to time, place, and manner regulations, the State may reserve the forum for its intended purposes, communicative or otherwise, as long as the regulation on speech is reasonable and not an effort to suppress expression merely because public officials oppose the speaker’s view.



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Bible Believers v. Wayne County

6th Circuit October 2015

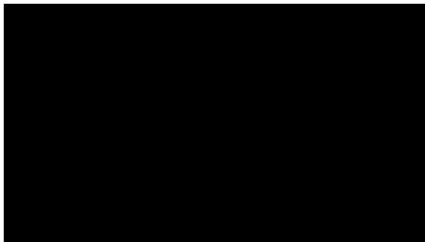
- The City of Dearborn in Wayne County, Michigan, has hosted the Arab International Festival ... every summer from 1995 until 2012.
- Free-speech claims require a three-step inquiry: first, we determine whether the speech at issue is afforded constitutional protection; second, we examine the nature of the forum where the speech was made; and third, we assess whether the government’s action in shutting off the speech was legitimate, in light of the applicable standard of review.
- We need only to address steps one and three because the parties agree that the Festival constituted a traditional public forum available to all forms of protected expression.



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Bible Believers v. Wayne County

6th Circuit October 2015

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Bible Believers v. Wayne County

6th Circuit October 2015

- Evangelists’ speech was not barred from protection under First Amendment pursuant to **doctrine of incitement**;
- Evangelists’ speech **did not constitute fighting words**;
- Sheriff’s office’s actions in requiring evangelists to leave festival were content-based;
- State could not silence speaker as expedient alternative to containing rioting individuals’ lawless behavior;
- Sheriff’s office’s actions **effectuated heckler’s veto**, in violation of evangelists’ free speech rights;
- Sheriff’s office’s actions violated evangelists’ rights under Free Exercise Clause;
- County’s disparate treatment of evangelists violated Equal Protection Clause;
- Deputy chiefs were not entitled to qualified immunity; and
- County was subject to municipal liability



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Bible Believers v. Wayne County

6th Circuit October 2015

- “If there is a bedrock principle underlying the First Amendment, it is that the government may not prohibit the expression of an idea simply because society finds the idea itself offensive or disagreeable.” *Snyder v. Phelps*, 562 U.S. 443, 458, 131 S.Ct. 1207, 179 L.Ed.2d 172 (2011) (citation and internal quotation marks omitted).
- “Nowhere is this [First Amendment] shield more necessary than in our own country for a people composed [from such diverse backgrounds].” *Cantwell v. Connecticut*, 310 U.S. 296, 310, 60 S.Ct. 900, 84 L.Ed. 1213 (1940).



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First Amendment

- “Born from immigrants, our national identity is woven together from a mix of cultures and shaped by countless permutations of geography, race, national origin, religion, wealth, experience, and education. Rather than conform to a single notion of what it means to be an American, we are fiercely individualistic as a people, despite the common threads that bind us. This diversity contributes to our capacity to hold a broad array of opinions on an incalculable number of topics. It is our freedom as Americans, particularly the freedom of speech, which generally allows us to express our views without fear of government sanction.”



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First Amendment

- Diversity, in viewpoints and among cultures, is not always easy. An inability or a general unwillingness to understand new or differing points of view may breed fear, distrust, and even loathing. But it "is the function of speech to free men from the bondage of irrational fears." *Whitney v. California*, 274 U.S. 357, 376, 47 S.Ct. 641, 71 L.Ed. 1095 (1927)



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First Amendment

- First Amendment demands that we tolerate the viewpoints of others with whom we may disagree. If the Constitution were to allow for the suppression of minority or disfavored views, the democratic process would become imperiled through the corrosion of our individual freedom. Because "[t]he right to speak freely and to promote diversity of ideas ... is ... one of the chief distinctions that sets us apart from totalitarian regimes," *Terminiello v. City of Chi.*, 337 U.S. 1, 4, 69 S.Ct. 894, 93 L.Ed. 1131 (1949), dissent is an essential ingredient of our political process.



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The First Amendment and the "Heckler's Veto"

- Free-speech claims require a three-step inquiry:
 - first, we determine whether the speech at issue is afforded constitutional protection;
 - second, we examine the nature of the forum where the speech was made; and
 - third, we assess whether the government's action in shutting off the speech was legitimate, in light of the applicable standard of review.
- *Cornelius v. NAACP Legal Def. & Educ. Fund, Inc.*, 473 U.S. 788, 797, 105 S.Ct. 3439, 87 L.Ed.2d 567 (1985)



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Incitement to Violence

- The *Brandenburg* test precludes speech from being sanctioned as incitement to riot unless:
 - (1) the speech explicitly or implicitly encouraged the use of violence or lawless action,
 - (2) the speaker intends that his speech will result in the use of violence or lawless action, and
 - (3) the imminent use of violence or lawless action is the likely result of his speech.



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Incitement to Violence

- The Bible Believers' speech was not incitement to riot simply because they did not utter a single word that can be perceived as encouraging violence or lawlessness. Moreover, there is absolutely no indication of the Bible Believers' subjective intent to spur their audience to violence. The hostile reaction of a crowd does not transform protected speech into incitement.



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Fighting Words

- A second type of speech that is categorically excluded from First Amendment protection is known as "fighting words."
- This category of unprotected speech encompasses words that when spoken aloud instantly "inflict injury or tend to incite an immediate breach of the peace." *Chaplinsky v. New Hampshire*, 315 U.S. 568, 572, 62 S.Ct. 766, 86 L.Ed. 1031 (1942)



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Fighting Words

- The Bible Believers' speech cannot be construed as fighting words because it was not directed at any individual. Furthermore, the average individual attending the Festival did not react with violence, and of the group made up of mostly adolescents, only a certain percentage engaged in bottle throwing when they heard the proselytizing.



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Response

- We do not presume to dictate to law enforcement precisely how it should maintain the public order. But in this case, there were a number of easily identifiable measures that could have been taken short of removing the speaker: *e.g.*, increasing police presence in the immediate vicinity, as was requested; erecting a barricade for free speech, as was requested; arresting or threatening to arrest more of the law breakers, as was also requested; or allowing the Bible Believers to speak from the already constructed barricade to which they were eventually secluded prior to being ejected from the Festival.



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Matal v. Tam 581 U.S. (2017)

- The Supreme Court provided a useful definition of what a **hate speech** is as well as it's relation to the First Amendment.
- Does a trademark constitutes a representation in any way of the government's point of view.
- This case is important to Law Enforcement operations in dealing with crowd control and management policies, training and articles.
- Preparation to address these crowds is best achieved through policy, training and application of how to manage crowds while protecting First and Fourth Amendment rights.
- In teaching officers the protections afforded by the First Amendment we focus on **content neutral-time, place or manner restrictions**,
- **Don't focus on what the protestors say but what they do.**



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Facts

- Simon Tam is the lead singer of "The Slants". He chose this moniker in order to reclaim and take ownership of stereotypes about people of Asian ethnicity.
- Tam sought federal registration of "THE SLANTS," on the United States Patent and Trademark Office (USPTO), but an examining attorney at the USPTO rejected the request.
- Tam contested the denial of registration before the examining attorney and before the USPTO's Trial and Appeal Board (TTAB) but to no avail.
- Eventually, he took the case to federal court, where the en banc Federal Circuit ultimately found the disparagement clause facially unconstitutional under the First Amendment's.



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Decision and Reasoning

- The Supreme Court affirmed the Federal Circuit's judgment holding that:
 1. The First Amendment prohibits Congress and other government entities and actors from abridging the freedom of speech; the First Amendment does not say that Congress and other government entities must abridge their own ability to speak freely.
 2. The Free Speech Clause does not regulate government speech. The Government's own speech is exempt from First Amendment scrutiny.
 3. The First Amendment forbids the government to regulate speech in ways that favor some viewpoints or ideas at the expense of others, but imposing a requirement of viewpoint-neutrality on government speech would be paralyzing.



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Decision and Reasoning

- 4. Public expression of ideas may not be prohibited merely because the ideas are offensive to some of their hearers. For this reason, the disparagement clause cannot be saved by analyzing it as a type of government program in which some content and speaker based restrictions are permitted.
- 5. Hate speech is speech that demeans on the basis of race, ethnicity, gender, religion, age, disability, or any other similar ground; but the proudest boast of our free speech jurisprudence is that we protect the freedom to express the thought that we hate.



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Matal v. Tam, 581 U.S. (2017)

- Conclusion:
This case is important because it finally concluded that trademarks constitute private, not government speech. Such conclusion could easily be extended to other situations where we need the government's protection or authorization to conduct our business.
- Additionally, by issuing an opinion as to what a hate speech is, the Court is giving law enforcement additional tools when they have to be in the middle of any kind of exercise under the First Amendment. **Even in situations where what we hear can offend or affect us in any way, knowing what is protected and what is not, allow us to prepare better for these situations.**



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CERTIORARI DENIED— First Amendment Considerations Should Require States to Prove Intent to Sustain Threat Convictions

- On March 6, 2017, Justice Sonia Sotomayor issued an interesting concurring opinion in *Perez vs. Florida*.
- In her opinion, the Justice stated that if First Amendment concerns would have been raised in the certiorari, the Supreme Court would have clarified the burden of proof that States should have to sustain threat convictions



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Perez vs. Florida

- Robert Perez and friends were drinking a mixture of vodka and grapefruit juice at the beach.
- The group went to a nearby liquor store to buy more ingredients for the drinks. At the store, Perez called the mixture a "Molly cocktail".
- An employee who overheard the conversation believed that he was referencing to an incendiary "Molotov cocktail".
- The employee asked Perez if he was going to burn anything up and Perez and his friends made a joke about it. Perez was inebriated and continued the banter, telling another employee that he had a Molotov cocktail and could blow the whole place up.



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Perez vs. Florida

- Perez later returned to the store and said that he was going to blow-up the whole world.
- The State prosecuted Perez for violating a Florida statute that makes it a felony to threaten to throw, project, place, or discharge any destructive device with intent to do bodily harm to any person or with intent to do damage to any property of any person.



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Perez vs. Florida

- The trial court instructed the jury that they could return a guilty verdict if the State proved two elements:
- 1) The threat itself; and
- 2) that Perez intended to make the threat.



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Perez vs. Florida

- The Supreme Court denied the writ of certiorari without issuing an opinion. Justice Sotomayor issued an opinion concurring with the decision.
- In her view, the jury instruction and Perez's conviction raised serious First Amendment concerns that would have been worthy of review by the Supreme Court. However, because the Appellant did not raise them in the lower courts, the Supreme Court had to deny the writ of certiorari.



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Perez vs. Florida

- Justice Sotomayor explained that to sustain a threat conviction, States must prove more than the mere utterance of threatening words, some level of intent is required. Additionally, it is not enough that a reasonable person might have understood the words as a threat, a jury must find that the speaker actually intended to convey a threat. Instead of being instructed to weigh this evidence to determine whether Perez actually intended to convey a threat—or even whether a reasonable person would have construed Perez's words as a threat, the jury was directed to convict solely on the basis of what Perez stated. In an appropriate case, the First Amendment does not permit such a shortcut.



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Crowd Control and Management: Protecting Civil Rights – Policy

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Topics

- 1st Amendment Application
- Policy and Operation Plans
 - DOJ Standards, Operational Plans,
 - Mass Arrest Protocol
- Training
 - Capture and contain, Formations, Arrest Teams, Skirmish lines
- Supervision
 - Bystander Liability
- Force Application



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Policies and Training Generally

Policies and procedures shall reflect and express the Department's core values and priorities, and provide clear direction to ensure that officers lawfully, effectively, and ethically carry out their responsibilities.



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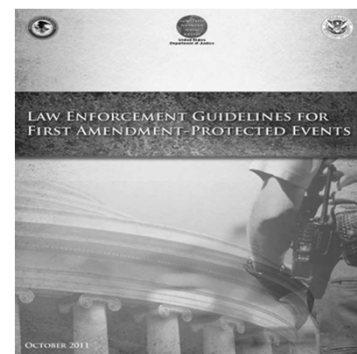
Resources Available

- IACP National Law Enforcement Policy Center– Civil Disturbances – 12/2005
- Law Enforcement Guidelines For First Amendment – Protected Events 10/2011
- Privacy, Civil Rights, and Civil Liberties Policy Development Guide 4/2012
- Independent Investigation Occupy Oakland Response 10/2012
- The Reynoso Task Force Report– UC Davis November 18, 2012
- CA POST Guidelines Crowd Management, Intervention and Control
- Ferguson Review – 2015
- Independent Review of the 2017 Protest Events in Charlottesville, VI
- MCCA Report on the 2020 Protests and Civil Unrest – October 2020



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DOJ Guidelines

- **Pre-Event Stage** — Discusses how law enforcement will plan for an event or demonstration where First Amendment protections are involved, focusing on the activity that begins when law enforcement leadership learns of an event and must determine the level, if any, of involvement at the event, from both public safety and investigative standpoints.
- **Operational Stage** — Focuses on how law enforcement will respond to the event, based on the findings from the Pre-Event Stage, including the development and execution of the Operations Plan.
- **Post-Event Stage** — Addresses how and whether information obtained as a result of the event (both during the Pre-Event Stage and Operational Stage) will be evaluated, disseminated, retained, or discarded, as per agency policy.



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Perception of All



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Review of Charlottesville Protest

- Among the report's findings:
- Charlottesville police didn't ensure separation between counter-protesters and so called alt-right protesters upset with the city council's decision to remove the Robert E. Lee statue from Emancipation Park.
- Officers weren't stationed along routes to the park, but instead remained behind barricades in relatively empty zones.
- City police didn't adequately coordinate with Virginia State Police, and authorities were unable to communicate via radio.
- State police didn't share a formal planning document with city police, "a crucial failure."
- Officers were inadequately equipped to respond to the clashes between the two groups, and tactical gear was not accessible to officers.



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MCCA Protest Report Summary



Figure 2 - Percentages of Agencies that Experienced Protests, Civil Disobedience, and Violence



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MCCA Protest Report

- 94% of major city law enforcement agencies (64 out of 68) experienced at least one protest that involved unlawful but non-violent acts of civil disobedience (e.g. illegal takeover of a public roadway)
- 79% of agencies (54 out of 68) experienced at least one protest that involved some level of violence



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MCCA Protest Report

- **Peaceful & Lawful**
 - 4434/8700 reported protests were both peaceful and lawful (51%)
- **Peaceful & Unlawful (Civil Disobedience)**
 - 3692/8700 reported protests were peaceful but involved civil disobedience (42%)
- **Violent Protests**
 - 574/8700 reported violent protests (7%)



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In-Depth Analysis of Protest Related Violence

- According to the MCCA assaults on police officers, looting, and arson were the most common criminal activities and approximately 72% of major city law enforcement agencies had officers harmed during the protests.
 - More than 2,000 officers sustained injuries
 - 62% of law officers reported some form of looting during protests (2,385 instances)
 - 56% of agencies experienced arson incidents



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Types of Weapons Used

- Most common weapons: improvised or weapons of opportunity (rocks, bricks, pieces of landscape, and bottles, including frozen water bottles and glass bottles) 78% of major city law enforcement agencies that experienced violent protests reported having officers attacked with these types of weapons.
- "Molotov cocktails" were thrown at officers
- Fire extinguishers, hammers, wood, cinderblocks, rocks, frozen fruit, and suspected bodily fluids.
- 41% of agencies dealt with a new type of weapon: lasers to target the eyes of officers
- Fireworks, bats, poles, shields were also reported
- 51% were confronted with firearms (usually they were legally obtained open carry weapons)
- Types of guns were mainly AR-15s, shotguns, and handguns



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Violence Trends

- There were some notable trends that correlated with violent protests as well:
 - Violent and extremist tactics were also coordinated online and oftentimes these violent extremists used the protests as an excuse to act out their violent goals. "Individuals with suspected violent extremist ideologies infiltrating various protest groups to commit acts of violence, looting, and rioting. More than three quarters of agencies (78%) discovered persons that seemed to self-identify with violent far-left ideologies, and more than half (51%) discovered persons that seemed to self-identify with violent far-right ideologies."



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Protest-Related Arrests

- From May 25th until July 31st, major city law enforcement agencies arrested 16,241 individuals during protest-related events. Nearly 17% (2,735) of these arrests were for felony offenses.
- "The fact that only 7% of the protests were violent but almost a fifth of the individuals arrested were for felony offenses is significant. This level of felony arrests demonstrates that law enforcement agencies largely focused on individuals who engaged in serious criminal activity and/or represented a threat to public safety."
- Unfortunately, because of media pressure and a shift in public opinion, many arrests that were made were quickly dismissed, which led to 52% of agencies reporting that they had to rearrest many criminals for protest related crimes.



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High-Trending Protester Tactics

- Staging Ahead of Protests: Many agencies have seen protesters use homeless camps or suburban neighborhoods to stage in advance of an incident.
- Out-of-Town Protesters: Many agencies experienced a correlation between the level of violence and presence of protesters from out of town. In some cases, the violence stopped entirely once out-of-town protesters left the area.
- "Snack Vans" Concealing Weapons: Many agencies observed vehicles delivering or storing weapons for protesters that were disguised as vehicles delivering water or snacks.



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High-Trending Protester Tactics

- Recording Police Radio Broadcasts: Many agencies experienced protesters using their cell phone to record radio transmissions from officers' lapel mics. The assumption is this tactic was used to listen to what was being broadcasted between police personnel.
- Bicycle Scouts: Many agencies experienced people on bicycles serving as scouts for protesters that were on foot. The bicyclists would ride in advance of the group and provide information on police activity.
- Doxing Police Officers: Many agencies experienced the targeting of their officers and their families, where persons associating with anti-police protests would use the internet to harass and cause personal harm.



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High-Trending Protester Tactics

- **Barricades in Autonomous Zones:** Many agencies experienced barricades being used against law enforcement. In one city, the barricades police deployed to contain a self-proclaimed autonomous zone were used by protesters to strengthen their position against law enforcement.
- **De-Arresting Tactics:** Many agencies experienced protesters using aggressive tactics to free arrestees from police custody.



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Possible Areas of Improvement & Conclusion

- Community outreach was the number one priority of agencies moving forward; because of a feeling of distrust from their community, police executives recommend neutral actors, such as community leaders or others, to act as liaisons between police and protest groups to facilitate some sort of communication.
- Funding was the second most important issue moving forward. Reforms and training require funding, which we're sure comes as no surprise.
- The third most important area for improvement was increasing the accuracy of media reporting. Several agencies reported that media outlets would fail to report on the violent acts that occurred and instead focused more on police use-of-force and the false narrative that agencies were disproportionate in their response.
- The last two categories that were identified involved improving policies and tactics and adding more transparency and body worn cameras to police agencies



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Start with the Policy....



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Policy Structure

- Set Guidelines – DOJ recommendations
- Clear Definitions–
- Procedures
 - Officer and Agency Response
 - Planning for response (Incident Commander)
 - Authority for deployment of resources
 - Conducting Crowd Control and Management
 - Response to crowd situations.
 - Declaring an unlawful assembly
 - Approved tactics and weapons (Batons/ OC)



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Policy (Cont.)

- **Prohibited Weapons for Crowd Control**
 - Canines, horses, fire hoses, Motorcycles
 - Skip fires Specialty Impact Munitions
 - Uses of Special Impact Munitions
 - ECW, Aerosol hand-held Chemical Agent
- **Mass Arrest Procedure**
 - Multiple Simultaneous Arrests
 - DA involvement
 - Arrest of Juveniles



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Policy (Cont.)

- **Video and Photographic Recording**
 - Authorization required
 - Disseminated to other agencies
- **Reporting**
 - Mandated supplemental reports
- **PIO involvement**
 - Important part of crowd management
 - Facebook, Twitter
- **Training – Policy and practical**



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Operations Plan

- Declaring an Unlawful Assembly
 1. Issue the declaration in a manner that you can record and document so that everyone affected could have heard the announcement.
 2. Specific amount of time to pack up their belongings and leave.
 3. Identify routes you want them to leave.
 4. Those left behind can be arrested – not forcibly driven off with chemical agents.



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Arrest Provisions

- Remember during mass demonstrations *Graham v. Conner* still guide use of force.
 - More to follow
- Applicable to seriousness of the crime
 - Civil disobedience v. Riot endangering the public or mass destructive vandalism occurs.
- How do you want to be depicted?
 - Slow down the arrest process and proceed methodically – Notice and compliance
 - Videotape all arrests.



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Mass Arrest Protocol

- Mass arrest is challenging – Impossible without an operation plan.
- Prohibit degrading conduct
 - Wait unreasonable hours for processing
 - Without restroom facilities
 - Booking numbers with markers on arrested
- Use digital age to make mass arrests easy
 - Video, iPad, digital camera



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Guiding Reports

- Occupy Oakland Frazier Investigation
 - June 2012
- UC Davis Incident Report
 - March 2012
- CA POST Crowd Management, Intervention and Control
 - March 2012
- Ferguson After Action Assessment
 - 2015



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Recommendations

- The recommendations are broken down into 3 sections:
 - Pre-Event
 - During the Event; and
 - Post Event



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Pre-Event



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Crowd Management Coordinator

- Each agency should establish a "Crowd Management Coordinator" to maintain crowd management policy updates, and crowd management and control (basic and recurrent) training for the agency.
- This Coordinator should also be responsible for reviewing crowd control equipment and technology and maintaining after action reports.



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Policy

- Agencies need to establish policies and procedures for effective law enforcement response in crowd management events that ensure the protection of life and property of all community members and participants, and guarantees the constitutional rights of the participants.



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Policies Should Address:

- Identify and describe the legal basis for response to any crowd event;
- Documenting Crowd Management events;
- Investigate and prosecute criminal activity at crowd events;
- Declaring unlawful assemblies and issuing dispersal orders;
- Mass arrest and booking;
- Use of force policies and procedures for managing crowds engaged in unlawful activities;
- Guiding the use of canines and prohibit their use for crowd control;



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Policy (Cont.)

- Guiding a centralized complaint intake process;
- Inter-agency support that requires respect to host agency policies
- Identify, develop, and use agency and community based resources.
- Identify and engage with community stakeholders to develop relationships;
- Facilitate the role of the media during crowd incidents;
- Use of electronic communication and social media for communication and investigation; and
- Responding to officers who receive extreme, immediate and credible threats to themselves and their families



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NIMS Compliant

- These directives must also be NIMS compliant in order to achieve standardized procedures for planning, managing, communicating, and collaborating in crowd and 1st Amendment-related events.
- Pre-deployment briefings and after-action reporting prior to demobilization shall be included in the policies and protocols.



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Use of Force

- Understanding appropriate levels of force are critical to a successful police response. Guidelines must be in place regarding the types of less-lethal force that will be authorized, as well as the criteria and circumstances for its use.
- This information should be shared with the participating agencies, its officers, and the community.



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Use of Force

- Agencies should research and establish a comprehensive use of force reporting policy at both departmental and individual levels.
- Officers must understand that practices regarding "group reporting" or collaboration following use of force events do not meet current standards or preferred practices for use of force reporting and documentation.



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Accountability

- Personnel accountability systems and equipment inventory documentation needs to be in place pre-event to assure that all citizen complaints are properly investigated.
- Agencies need to develop a detailed accountability system for issuance, recovery, and re-supply of any and all less-lethal munitions (specialty impact and chemical agents) to any officer or supervisor.
- All accounting of less-lethal munitions should be available immediately after the conclusion of any event involving their use.



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Mutual Aid Agreements

- When entering into mutual aid agreements, participating agencies should form a unified compliance committee to agree upon policy content, training curriculum, and joint tactics.
- The agreements should mandate participation, and any agency that fails to do so should be released from the agreement.
- Agencies should establish clear distinctions regarding which agency's policies will prevail when an agency is operating outside of its jurisdiction.



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Community Relations

- (1) Invest time to establish trusted relationships with all segments of the communities they serve;
- (2) Communicate with more than a select few by establishing ongoing dialogue with all segments of the community;
- (3) Engage in dedicated and proactive efforts to understand the communities they serve and to foster strong trust between the officers and the communities; and
- (4) Develop and maintain a well-established network with their community leaders, and initially contact them with information on incidents that impact their community



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Public Information Officer (PIO)

- This position should be elevated to a command level individual (sworn or civilian).
- This person should be a public relations professional retained to develop an overarching messaging campaign, which includes the use of electronic media and social media outlets.



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EOC

- Periodic Emergency Operations Center (EOC) exercises must be conducted and evaluated. Exercises should comport to the NIMS structure.
- At any location where crowd events frequently occur, agencies should develop a trained cadre of professional staff, mid-level leadership, and command and executive level personnel, who are trained and qualified incident management team leaders.



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Regional Response

- Whenever there is a mutual aid agreement between law enforcement agencies, regional response training must be provided regularly to officers designated to respond on critical incidents or event exercises.
- Policing philosophies and professional standards must be shared, and key community leaders should be involved.



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During the Event



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Intelligence

- Agencies must develop a mechanism to gather raw information, and manage tips and leads, such as videos, from the scenes of mass gatherings, so intelligence can be forwarded for analysis.
- Protocols for gathering and managing intelligence should be created and communicated.
- An intelligence officer should be identified and assigned to the command post to enhance the two-way information flow, and ensure that tactical intelligence is being considered.



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Incident Commander

- The Incident Commander should remain focused on strategic decisions and constant communication with supervisors and officers.
- He or she should understand the importance of intelligence officers and pay attention to their recommendations.
- Other duties like community engagement should be delegated to other members of the command team.



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Tactical Response

- The scale and manner of tactical response should be incremental, not an "all or nothing" proposition.
- Such responses can begin in a relatively limited manner and can be escalated and de-escalated if or when the circumstances warrant.
- Constant monitoring of crowd behavior is essential for response and planning.
- Historical context of the community should be considered.



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Tactical Response

- Agencies should focus not only on what is authorized, but also on what is right.
- Consider options for having tactical teams and equipment such as armored vehicles in place, but out of public view until or if their deployment is necessary.
- Armored vehicles should not be visible except in narrowly defined circumstances such as active shooter situations, or when shots are fired.



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Less-Lethal Weapons

- The use of force via less-lethal weapons should be a last resort (for crowd control) to maintain order in situations when the threat to the safety of persons and protection of property are in imminent jeopardy.
- Force should be used only in a manner consistent with law and agency policy, after alternatives have been reasonably exhausted, multiple warnings have been given to demonstrators, and clear avenues to escape exist.



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Less-Lethal Weapons

- Agencies should develop an accepted audio recording of a warning that less-lethal weapons are about to be deployed in advance of a critical incident.
- This warning can be replayed via the public address system to ensure correct and consistent information is provided.



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Dispersal Order

- After a dispersal order is given and movement of the crowd is completed, arrests should be made to those remaining present at the unlawful assembly, or otherwise violating the law.
- When considering predicate arrest authority, PD staff should consult with the State's Attorney, specifically focusing on time, place, and manner issues.



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Communication

- Police must reach out to protest leaders to understand their issues and establish an understanding of police responsibilities for managing the safety of protesters and of the community.
- Communication between police and protest leaders should remain open and consistent during and after the protest.
- Be proactive during peaceful protests to engage community members to identify issues of concern and establish rapport.



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Post Event



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Critical Incident Debriefs

- Critical Incident Debriefs ("Hot Washes") should be conducted by command personnel with a vertical representation (officer-sergeant-lieutenant-captain) of participating sworn members.
- These debriefs should be led by those command personnel having direct knowledge and involvement in the incident.
- Department personnel should be able to discuss issues and concerns openly, professionally, and constructively.



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Documentation

- Report and supplemental forms documenting arrests, injuries, uses of force incidents (not involving hospitalization), and munitions expended by any involved law enforcement agency should be submitted to the LE Agency Planning Division, Documentation Unit prior to being released from duty or mutual aid.
- If data and information are not collected immediately after a mutual aid event and pre-departure, assignment of a LE officer to oversee and ensure collection, including the establishment of a deadline, must be made.



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The End...



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